IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

D.B. Civil Special Appeal (Writ) No.
93/1996

The State of Rajasthan through the Secretary, Environment Department, Government of Rajasthan, Government Secretariat, Jaipur

.....Appellant

Versus

1. Shri M.K. Shrimali, aged about 30 years, son of Shri M.L. Shrimali, resident of BH/G, Malaviya Regional Engineering College, Jaipur

2 Sunil Kumar Sharma, aged 26 years, son of Shri Damodar Prasad Sharma, resident of C/o Shri Mahavir Prasad Saini, 45, Gyatri Nagar, Tonk Road, Sanganer Air Port Circle, Jaipur

.....Respondents/Petitioners

3. Rajasthan Board of Prevention and Control of Pollution Government of Rajasthan, Jhalana Doongri Institutional Area, Jaipur through its Chairman.

.....Proforma Respondent

Date of Judgment :: 12th April, 2007

P R E S E N T

HON'BLE MR. JUSTICE R.M. LODHA

HON'BLE MR. JUSTICE R.S. CHAUHAN

Mr. G.S. Gill, Additional Advocate General for the appellant-State

Oral Judgment (Per R.M. Lodha, J.)

Rajasthan Board of Prevention and Control of Pollution-respondent No.3 (for short, `the Board') published an advertisement (1/91) for recruitment to the two posts of Environment Engineer and five posts of Assistant Engineer (Environment). M.K. Shrimali (original writ petitioner No.1) and Sunil Kumar Sharma (original writ petitioner No.2) applied for the post of Assistant Engineer (Environment). The written examination was conducted on 23rd November, 1991 and the merit list of successful candidates was prepared out of which 24 meritorious candidates were called for interview on February 17, 1991 by the selection board. After holding interviews, a select list of the candidates was prepared but the same was cancelled. That necessitated the original writ petitioners to approach this

Court by filing the writ petition. To complete the narration of facts, it may be noticed here that out of five posts of Assistant Engineers to be filled-in, three were in the general category and two in the reserved category. No candidate of Scheduled Caste or Scheduled Tribe for reserved seats was found successful in written test and, therefore, the interviews were held only for filling the vacancies in the general category seats.

2. The sole ground on which the action of cancellation of selection list was challenged was that the State Government acted in an arbitrary manner in cancelling the select list.

3. The State Government as well as the Board filed reply-affidavits in opposition to the writ petition and set out the reasons for cancellation of the select list. They stated that because of the

discrepancies in the entire selection process and the said selection being not in conformity with the Board's own resolution, the decision was taken to cancel the select list.

4. The Single Judge, however, in his order dated 14th November,1995 was not satisfied with the stand of the State Government and the Board and held that the decision of the State Government in cancelling the select list was arbitrary. Consequently the Single Judge allowed the writ petition and directed the State Government to proceed further with the process of selection for the vacancies of Assistant Engineers (Environment) in general category as per select list.

5. The State impugns the decision of Single Judge in this appeal.

6. On 5th February, 1996, the appeal was admitted and the operation of the order

passed by the Single Judge on 14th November, 1995 was stayed. Thus for more than 11 years the stay order is operative. Despite service the original writ petitioners (respondents No. 1 and 2 herein) have not chosen to appear.

7. Having bestowed our thoughtful consideration to the matter, we are unable to sustain the order of the Single Judge for more than one reason. For one, the legal position is no more res-integra that mere inclusion in the select list does not confer the candidates included therein an indefeasible right to appointment. The State is under no legal obligation to fill-up all or any of the vacancies even after the entire selection process has taken place. It is true that the State has to act fairly and it cannot act in an arbitrary manner. In the present case, the reasons have been stated by the State

Government for cancelling the select list. The said reasons cannot be said to be not good reasons. For another, and more important, that the Board at the relevant time did not have it's own rules governing such selection. In it's decision No. 82.83 the Board decided for a particular procedure to be followed for recruitment of Assistant Engineers. According to that there was to be a written examination; that maximum marks of the written examination were 75; that marks were also to be given for experience and interview out of 12 ½ for each; that minimum qualification for SC / ST was to be as per the Rules adopted in Rajasthan Public Service Commission and procedure for calling number of successful candidates was also to be as per the RPSC Rules and practice for calling for interview. As a matter of fact when the selection process

was initiated and completed; even the Board was not aware about the selection procedure which was being followed by Rajasthan Public Service Commission. The minimum qualifying marks in the written examination were not determined. Similarly qualifying marks in written test with special provision for SC/ST candidates was not prescribed. As a matter of fact the entire selection process was not in accord and full conformity with the Board's resolution No. 82.83. Even though the reply by the State Government and the Board was little bit deficient as all these aspects were not fully highlighted but the original file summoned by the Single Judge concerning the special selection mentioned these deficiencies in the procedure. This is clearly seen from the concerned papers handed in by Additional Advocate General for our

perusal. However the Single Judge over-looked these aspects.

8. Before the appointments could be made based on the select list, on a re-look at the whole matter at various levels, if the State Government found that procedure for selection was not in conformity with the Board's own resolution No. 82.83 and consequently cancelled the select list, by no stretch of imagination can it be held that the action of the State Government in cancelling the select list was arbitrary.

9. As it is due to the stay order of the Division Bench passed on 5th February, 1996 the operation of the order dated 14th November, 1995 remained stayed. It would not be unreasonable to presume that during this time the fresh selection to the vacant posts of Assistant Engineers (Environment) would have taken place, more particularly after the Board had framed

it's recruitment rules. This is fortified by the fact that neither the respondent Nos. 1 and 2 nor anybody on their behalf is present.

10. Resultantly, we allow this appeal and set-aside the order dated 14th November, 1995. Since the respondents No. 1 and 2 have not chosen to appear, we direct the parties to bear their own costs.

R.S. Chauhan, J. R.M. Lodha,J.

DK/-